

WESTERN AUSTRALIA

LEGAL AID COMMISSION AMENDMENT ACT

No. 90 of 1986

AN ACT to amend the *Legal Aid Commission Act 1976*.

[Assented to 10 December 1986.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title

1. This Act may be cited as the *Legal Aid Commission Amendment Act 1986*.

Commencement

2. The provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

Principal Act

3. In this Act the *Legal Aid Commission Act 1976** is referred to as the principal Act.

[*Reprinted as approved 2 March 1983 and amended by Acts Nos. 48 of 1984 and 98 of 1985.]

Section 4 amended

4. Section 4 of the principal Act is amended in subsection (1)—

(a) by inserting after the definition of “Attorney General” the following definition—

“ “Barristers’ Board” means the Board constituted under Part I of the *Legal Practitioners Act 1893*; ”;

(b) in paragraph (d) of the definition of “legal aid”, by deleting “the provisions of paragraph (e) of section 15” and substituting the following—

“ section 15 (1) (e) ”; and

(c) by deleting the definitions of “section” and “subsection”.

Section 7 amended

5. Section 7 of the principal Act is amended—

(a) in subsection (1) (b)—

(i) by deleting “six” and substituting the following—

“ 7 ”; and

(ii) by deleting “one” in subparagraph (iii) and substituting the following—

“ 2 ”;

(b) in subsection (3) (b), by deleting “the remaining three” and substituting the following—

“ 2 ”; and

(c) in subsection (8), by deleting “the member” and substituting the following—

“ each member ”.

Section 12 amended

6. Section 12 of the principal Act is amended by repealing subsection (3) and substituting the following subsection—

“ (3) Where the Commission provides legal assistance by way of legal aid in relation to proceedings that assistance may be provided in relation to proceedings instituted or proposed to be instituted or which could be instituted—

(a) in the High Court of Australia, the Supreme Court or any other court or tribunal established by or under a law of the Commonwealth or of the State; or

(b) in any court or tribunal established by or under a law of another State or a Territory of the Commonwealth where, for reasons of convenience, or under arrangements made with a person or body providing legal aid in that State or Territory, it is in the opinion of the Commission desirable that legal aid be provided. ”.

Section 14 amended

7. Section 14 of the principal Act is amended—

(a) in subsection (1) (b), by deleting “properly incurred by him in performing those services” and substituting the following—

“ that are properly incurred by him in performing those services and are approved ”;

and

(b) in subsection (1a), by deleting “In subparagraph (ii) of paragraph (a) of subsection (1)” and substituting the following—

“ In subsection (1) (a) (ii) and (b) ”.

Section 16B inserted

8. After section 16A of the principal Act the following section is inserted—

Delegation

“ 16B. (1) The Commission may, in writing, either generally or otherwise as provided by the instrument of delegation, delegate to a member, a legal aid committee, the Director or a member of the staff any of its functions or powers under this Act, other than this power of delegation.

(2) Notwithstanding section 23 or 28, a function or power delegated under this section shall not be further delegated.

(3) A function or power so delegated may be performed or exercised by the delegate in accordance with the instrument of delegation and, when performed or exercised by the delegate, shall, for the purposes of this Act, be deemed to have been performed or exercised by the Commission. ”.

Section 23 amended

9. Section 23 of the principal Act is amended by repealing subsection (3).

Section 28 amended

10. Section 28 of the principal Act is amended—

- (a) by repealing subsection (4); and
- (b) in subsection (5), by deleting “paragraph (f) of section 15” and substituting the following—

“ section 15 (1) (f) ”.

Section 36 amended

11. Section 36 of the principal Act is amended in subsection (1) by deleting “prescribed” and substituting the following—

“ approved by the Commission ”.

Section 37 amended

12. Section 37 of the principal Act is amended—

(a) in subsection (2), by deleting “Legal” and substituting the following—

“ Subject to subsection (4c), legal ”;

(b) in subsection (3), by inserting after paragraph (b) the following paragraph—

“ (ba) moneys or other financial resources—

(i) in which the person has any legal or equitable interest;

(ii) over which the person has any direct or indirect control; or

(iii) to which the person has, or could reasonably be expected to have, access; ”;

(c) by inserting after subsection (3) the following subsections—

“ (3a) In the making of a decision whether a person is in need of legal aid by reason that he is unable to afford the full cost of obtaining from private practitioners the legal services in respect of which the legal aid is sought, a legal aid authority shall not have regard—

(a) where, under the *Child Welfare Act 1947*, the person is—

(i) a child under the guardianship of the Director-General; or

(ii) a child placed under the control of the Department,

to the resources of the Department that are capable of being applied for the provision of legal aid to the person;

(b) in any case, including the case of a person referred to in paragraph (a), to the resources of any department, instrumentality or agency of the Crown, in right of the State or the Commonwealth, that are capable of being applied for the provision of legal aid to the person.

(3b) In subsection (3a) (a), “child”, “Department”, and “Director-General” have the meanings that those expressions have, respectively, in the *Child Welfare Act 1947*. ”;

(d) in subsection (4) (c)—

(i) by deleting “and” after subparagraph (i);

(ii) by inserting after subparagraph (ii) the following—

“ and ”; and

(iii) by inserting the following subparagraph—

“ (iii) the number, nature and relative merits of other applications for legal aid that have been made, or are reasonably expected to be made; ”; and

(e) by inserting after subsection (4a) the following subsections—

“ (4b) In deciding under subsection (2) whether to provide legal aid to a person, a legal aid authority may have regard to, and may refuse to provide legal aid because of, the apparent financial circumstances and standard of living of the person.

(4c) Where—

(a) in relation to proceedings in a state that is a Contracting State within the meaning of the Convention on International Access to Justice (signed at The Hague on 25 October 1980), a person makes application under this Act for legal assistance for the purpose of a matter to which Article 13 of that Convention applies; and

(b) a legal aid authority is satisfied that, in accordance with Article 1 of that Convention, the person has been granted or has received legal aid for those proceedings,

legal aid shall, notwithstanding any other provision of this Act, be provided to the person for that purpose in accordance with Article 13 of that Convention. ”.

Section 38 amended

13. Section 38 of the principal Act is amended in subsection (2) by deleting "section 15" and substituting the following—

“ section 15 (1) ”.

Section 39 amended

14. Section 39 of the principal Act is amended—

(a) in subsection (1) (b)—

(i) by deleting “either or both” and substituting the following—

“ such conditions as the legal aid authority considers appropriate and, without limiting the generality of the foregoing, may be provided subject to all or any ”;

(ii) by deleting “legal aid.” at the end of subparagraph (ii) and substituting the following—

“ legal aid; or ”; and

(iii) by inserting after subparagraph (ii) the following subparagraph—

“ (iii) a condition that, on demand by the Commission, the applicant shall grant and execute a mortgage, bill of sale, debenture, charge or other security over land or other property to secure the payment of the whole or any part of the cost of providing the legal aid. ”;

(b) in subsection (3), by deleting “If” and substituting the following—

“ Without limiting the rights of the Commission under a security referred to in subsection (1) (b) (iii), if ”; and

(c) in subsections (3) and (4), by deleting “paragraph (b) of subsection (1)” and substituting in each case the following—

“ subsection (1) (b) (i) or (ii) ”.

Section 40 amended

15. Section 40 of the principal Act is amended—

(a) by inserting after subsection (6) the following subsection—

“ (6a) In making an exclusion, removal or limitation of a private practitioner under subsection (6) the Commission may have regard to any order or finding of fact relating to that practitioner made under Part IV of the *Legal Practitioners Act 1893* by the Barristers’ Board or by the Full Court of the Supreme Court. ”; and

(b) by inserting after subsection (8) the following subsection—

“ (8a) Where, under subsection (6), the Commission has excluded or removed the name of a private practitioner from a panel of names prepared pursuant to this section the Commission may, by notice in writing to the practitioner, direct that he cease to perform legal services under this Act—

(a) with respect to a particular matter;

(b) on behalf of a particular assisted person; or

(c) on behalf of assisted persons generally. ”.

Section 42 amended

16. Section 42 of the principal Act is amended—

(a) by inserting after “considers that” the following—

“ those ”; and

(b) by deleting “ordinarily” and substituting the following—

“ approved in accordance with section 14 and ”.

Section 44 amended

17. Section 44 of the principal Act is amended in subsection (1)—

(a) by deleting “paragraph (i) of section 15” and substituting the following—

“ section 15 (1) (i) ”; and

(b) in paragraph (d), by inserting before “incurred” the following—

“ approved in accordance with section 14 and ”.

Section 46 amended

18. Section 46 of the principal Act is amended—

- (a) in the definition of “decision”, by inserting after paragraph (b) the following paragraph—

“ (ba) a decision refusing to approve, in accordance with section 14, any disbursement or out-of-pocket expense for which such approval is sought; ”; and

- (b) in paragraph (b) of the definition of “person affected”, by inserting before “or (c)” the following—

“ , (ba) ”.

Section 64 amended

19. Section 64 of the principal Act is amended—

- (a) in subsection (2), by deleting “subsection (2a)” and substituting the following—

“ subsections (2a) and (2c) ”;

- (b) by inserting after subsection (2b) the following subsection—

“ (2c) Notwithstanding anything contained in subsection (2), a person to whom this section applies may, with the approval of the Chairman or the Commission, disclose any information referred to in subsection (2) to the Barristers’ Board for the purposes of the *Legal Practitioners Act 1893* and, in construing this subsection, “disclose” includes disclose by producing any relevant document. ”;

- (c) in subsection (3), by deleting “the Director has in accordance with subsection (2a) produced that document or divulged or communicated that information” and substituting the following—

“ , under subsection (2a) or (2c), that document has been produced or that information has been disclosed ”; and

(d) in subsection (4)—

(i) by deleting “or” after paragraph (a);

(ii) by deleting the full stop at the end of paragraph (b) and substituting the following—

“ ; or ”; and

(iii) by inserting the following paragraph—

“ (c) in an inquiry by the Barristers’ Board or in proceedings before the Supreme Court, under the *Legal Practitioners Act 1893*. ”.
